

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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MOHMAD IQBAL GULAM R SHAIKH

Versus

DISTRICT DEVELOPMENT OFFICER  
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Appearance:

MR ND NANAVATI for Petitioner  
MR BD DESAI, AGP for Respondent No. 1  
MR SV PARMAR for Respondent No. 2, 3  
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CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 05/05/2000

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner has challenged the order dated 24.8.1987 passed by the District Development Officer, Surat disqualifying the petitioner from holding the office of the member of Nagar Panchayat under Section 49 of the Gujarat Panchayats Act, 1961 and also the order dated 29.10.1988 passed by the Additional Development Commissioner dismissing the petitioner's appeal against the said order of the District Development Officer.

2. While issuing notice on 3.1.1989, this Court had granted ad-interim relief staying the operation of the aforesaid two orders. Thereafter the said ad-interim relief was confirmed while admitting the petition on 21.4.1989 and the petitioner's statement was noted that he had already removed encroachment as mentioned in the certificate issued by the Nagar Panchayat.

3. In response to the notice issued by this Court earlier, affidavit in reply dated 10.2.1989 was filed by the District Development Officer, Surat justifying the order of disqualifying the petitioner for a period of four years.

4. Mr Oza appearing for Mr ND Nanavati, learned counsel for the petitioner submits that the impugned order was passed by the Additional Development Commissioner, Surat without considering the petitioner's reply. This contention was also raised before the Additional Development Commissioner and it was rejected on the ground that neither the reply nor the acknowledgment showing the receipt of the reply by the Office of the District Development Officer were produced. Even while filing the petition or at the time of hearing of the petition, they have not been produced though an averment is made in the petition that the petitioner craves leave to refer to and rely upon and also produce the postal acknowledgment in this behalf at the time of hearing of the petition. In the circumstances, it is not possible to accept the contention urged on behalf of the petitioner that the petitioner had sent the reply. The first contention must, therefore, fail.

As regards the other contention, it is submitted that the charges levelled against the petitioner were frivolous. It is not possible to accept this contention because the petitioner was a member of the Gram Panchayat which was subsequently converted into a Nagar Panchayat. The petitioner had taken loan for constructing a cabin. The Panchayat had passed a resolution to allow the petitioner to put up a cabin on the land on rental basis as per the resolution dated 24.10.1975. After getting the land and putting up a cabin, the petitioner did not pay any rent. The petitioner not merely did not pay rent but even encroached the additional land near the cabin. The case of the petitioner that the petitioner's father had put up the cabin on the land in question and had made encroachment was not accepted by the authorities and it was noted that the the petitioner had promised to remove the encroachment.

5. In view of the findings given by the authorities below, it is not possible to hold that the authorities had acted without any material or that the finding given by the authorities was perverse. In this petition under Articles 226 and 227 of the Constitution, this Court would not exercise its extraordinary, prerogative and discretionary jurisdiction when no jurisdictional error or error apparent on the face of the record is pointed out.

6. The petition is, therefore, dismissed. Rule is discharged. Ad-interim relief granted earlier stands vacated.

May 5, 2000 (M.S. Shah, J.)  
sundar/-